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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 UNITED STATES OF AMERICA, *et*  
4 *al.*,

5 Plaintiffs,

6 v.

24 Civ. 3973 (AS)

7 LIVE NATION ENTERTAINMENT,  
8 INC., *et al.*,

9 Defendants.

Conference (Remote)

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10 New York, N.Y.

May 2, 2025

2:06 p.m.

11 Before:

12 HON. ARUN SUBRAMANIAN,

13 District Judge

14 APPEARANCES

15 U.S. DEPARTMENT OF JUSTICE  
16 ANTITRUST DIVISION

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25

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(Case called)

THE COURT: Let's have appearances, starting with the plaintiff. And only the attorneys who are going to be speaking need to speak up at this time.

MS. SWEENEY: Good afternoon, your Honor. This is Bonny Sweeney for the United States.

THE COURT: And do we have anyone else for the plaintiff?

MR. GITLIN: Yes, your Honor. Good afternoon. This is Adam Gitlin of the Office of the Attorney General of the District of Columbia for the state plaintiffs.

THE COURT: And for the defendants?

MR. PFEIFFER: Good afternoon, your Honor. This is Al Pfeiffer of Latham & Watkins on behalf of defendants.

MR. MARRIOTT: And also David Marriott on behalf of defendants, your Honor. Good afternoon.

THE COURT: All right. Good afternoon to everybody. Thank you for joining at the last minute. I know it's a Friday afternoon. I do appreciate everyone joining.

And I'll just ask, for the court reporter's benefit, that before anybody speaks, they just say their name so that the court reporter can keep tabs on who is speaking.

All right. So the reason why I called this conference is, I received a—I'm just looking at the pages here—a 20-plus-page motion to bifurcate, and what I realized, after

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1 reviewing the motion and ruling on the defendants' request for  
2 an extended briefing schedule, is that this might be the kind  
3 of thing that it's worth everyone talking about now, given that  
4 we have an expert disclosure deadline of July 28, which is in  
5 just a few months. So that's the reason why I wanted to have  
6 this conference. And I have a few questions for the plaintiff  
7 here on the motion to bifurcate, and I'll obviously hear  
8 anything else the plaintiffs want to say, and the defendants as  
9 well.

10 So who's going to be speaking on this issue from the  
11 plaintiff's side?

12 MS. SWEENEY: Your Honor, Bonny Sweeney for the United  
13 States, but the states have some separate issues that  
14 Mr. Gitlin is going to address—

15 THE COURT: All right.

16 MS. SWEENEY: —depending on your Honor's questions.

17 THE COURT: Sure. So I'm going to be asking you some  
18 really basic questions. I apologize at the outset. What I'm  
19 hoping is that we're all on the same page and your answers will  
20 just help me understand what is being requested and hopefully  
21 will frame the inquiry.

22 So let me start off with just my understanding of  
23 what's happening, and you can tell me where I'm wrong. Now I  
24 understand from your motion that you say the plaintiffs have a  
25 right to a jury trial under the Seventh Amendment, given that,

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1 among other things, they are seeking legal relief, which is one  
2 of the prongs of the *Tull* test. Am I right about that?

3 MS. SWEENEY: Yes, your Honor.

4 THE COURT: Okay. And for purposes of bifurcation,  
5 the plaintiffs seek to waive their jury trial rights as to the  
6 relief portion, meaning the damages part of the case, and  
7 solely a jury trial on liability, right?

8 MS. SWEENEY: Your Honor—

9 MR. GITLIN: Your Honor, this is Adam Gitlin. We'll  
10 be doing our best to tag team on this, depending on your  
11 Honor's questions, but since that pertains to the states' jury  
12 trial rights as pertains to the damages, yes.

13 THE COURT: Okay. Good. And so put another way, the  
14 state plaintiffs want to waive their jury trial right to the  
15 very thing that gave them a right to a jury trial in the first  
16 place. Right?

17 MR. GITLIN: I wouldn't quite put it that way, your  
18 Honor. That is to say, the nature of the action is legal and,  
19 yes, the treble damages and, with respect to the state damages  
20 causes of action, they are part—they are the remedial parts  
21 that I think maybe makes it most clearly legal in nature, but  
22 we think of the claims as a whole. I mean, I think that's why  
23 *Tull* has two prongs. You don't just look at the remedy, you  
24 look at the nature of the claims, and we argue that they are  
25 legal in our brief.

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1 THE COURT: Right. You hit the nail on the head. I'm  
2 trying to look at the claims as a whole because of the relief  
3 that you're seeking. I mean, there's another aspect to the  
4 *Tull* test, but one of the aspects focuses on the relief sought,  
5 and that's the damages that you referred to, and so that is a  
6 component; that's a reason why you have a right to a jury trial  
7 in the first place. But the motion says that as to that thing  
8 that gave rise to the Seventh Amendment jury trial right,  
9 you're now saying, well, I'm waiving the jury trial right as to  
10 just that piece, the damages portion, and I guess my question  
11 is whether there's a case that you have that addresses the  
12 Seventh Amendment issue and says that that's okay.

13 MR. GITLIN: So, your Honor, I think the most  
14 analogous case that we've—and I should say that we did not  
15 understand this, in a sense, to be actually part of the  
16 parties' dispute in that, insofar as we've discussed this with  
17 defendants, one of the things that we seem to be in agreement  
18 on is the defendants are not interested in trying these damages  
19 portions to a jury. The thing you will see in common, at least  
20 as we understand the different proposals, is that damages would  
21 be part of the remedies proceedings that would happen before  
22 your Honor. So—

23 THE COURT: Let me stop you right there and confirm  
24 that that's accurate.

25 So either Mr. Pfeiffer or Mr. Marriott, is that right

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1 that, whether there's a case or not, there's no dispute between  
2 the parties that there's a right to a jury trial and that the  
3 plaintiffs are permitted to waive that right and only assert it  
4 as to liability, and as to the damages portion, that could be  
5 waived and it can go to the bench?

6 MR. PFEIFFER: Your Honor, this is Al Pfeiffer. I'll  
7 speak to that first, at least.

8 Actually, I don't think that's correct, your Honor. I  
9 certainly don't remember us having a discussion in which we,  
10 the defendants, said that. And in fact, in terms of your  
11 Honor's question about precedent on this, I think the *Google* ad  
12 search case may be instructive because—it's different, but  
13 perhaps analogous. In that case, when the plaintiffs, state  
14 plaintiffs did assert their damages claims, Google paid them  
15 off, rendering the damages actual portion moot, at which point  
16 the court decided that there was not an entitlement to a jury  
17 trial on liability anymore. Now the nature of the claims  
18 didn't change, but because the damages portion was removed,  
19 there was no longer a jury trial right. Again, slightly  
20 different circumstances, but I would think here analogous that  
21 if there is a waiver of that which at least is a big part of  
22 what creates the jury right, then we don't agree that there  
23 would be entitlement to the jury trial.

24 MR. GITLIN: Adam Gitlin for the state plaintiffs,  
25 your Honor. If I could respond briefly.

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1 THE COURT: Sure.

2 MR. GITLIN: So first of all, defendants haven't  
3 offered to pay us for our damages claims. If they want to,  
4 we're happy to have that conversation. But if we're just  
5 talking about the proposal that we provided, I think the case  
6 that we cite in our brief, *Leviton Manufacturing v. Pass &*  
7 *Seymour*, 425 F.Supp.3d 165, that responds directly to  
8 Mr. Pfeiffer's point, right? That's a case in which there was  
9 a patentee who stipulated with the alleged infringer on having  
10 to pay damages, but only if the alleged infringer failed to  
11 secure declaratory judgment on the patent's invalidity, right,  
12 so they were happy to set aside having to try one portion, the  
13 portion of the case, and the damages portion that, again, we're  
14 arguing just for the sake of argument that—that is, it's only  
15 the damages that provides the hook, and we don't take that  
16 position. We take the position that these are legal claims,  
17 antitrust sounds in tort, as explained in our briefing, our  
18 position. But even if you just focus on the damages side of  
19 it, the mere fact that we are proposing a scenario where we are  
20 not trying damages to a jury doesn't mean that we have to waive  
21 our jury trial right.

22 THE COURT: Okay. Let's assume for the moment that  
23 you're right, all right? So, I mean, I'm going to step through  
24 the next part of my questions here. So let's assume you're  
25 right. And then in your motion, you're requesting that the

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1 Court bifurcate liability and damages. And what I understand  
2 you to be saying is that the Court has discretion to bifurcate  
3 liability and damages, meaning you are not saying that the  
4 Court is required to bifurcate liability and damages as a  
5 result of the plaintiffs' waiver of the jury trial right as to  
6 the damages piece, you're saying that it's up to the Court's  
7 discretion; am I right about that?

8 MR. GITLIN: Yes, your Honor. And again, we don't  
9 think that—or at least up until today. If defendants are now  
10 demanding—if I understand correctly, that now defendants are  
11 now demanding a jury trial with respect to damages, and that  
12 that's not a position they can walk back after this, that's one  
13 thing. We had understood that there wasn't a dispute on that  
14 issue, and then it would simply be that the Court could use its  
15 discretion to decide whether it's an all-jury trial or does it  
16 get bifurcated in the way that changes things.

17 THE COURT: Okay. Understood. Thank you.

18 All right. And now I want to figure out why you're  
19 making this request. And so now let's say that I were to deny  
20 your request to bifurcate, and so we keep moving along as was  
21 previously scheduled. So is that possible? Meaning, are the  
22 plaintiffs saying that they cannot finish discovery on  
23 liability and damages given the current schedule? Or are you  
24 just saying that you think it would be more efficient to  
25 bifurcate?



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1 MR. GITLIN: So on behalf of the state plaintiffs,  
2 your Honor—I'll let Ms. Sweeney speak as to bifurcation, with  
3 respect to equitable remedies. If the Court rules that  
4 defendants essentially, you know, have preserved their jury  
5 trial demand with respect to damages, state plaintiffs are fine  
6 proceeding with a jury trial on damages. It may make sense as  
7 a matter of efficiency, the same kind of efficiency that  
8 animates bifurcation decisions under Rule 42, to see whether or  
9 not we have a jury verdict on liability and then see whether  
10 essentially we need to keep the jury impaneled for expert  
11 testimony on damages soon after, and that may in turn, yes,  
12 warrant a slight extension of the discovery schedule, at least  
13 with respect to experts who are going to testify regarding  
14 damages. And the United States won't present expert testimony  
15 about that, but state plaintiffs can meet and confer with  
16 defendants on whether that makes sense for everyone.

17 THE COURT: Okay. I think I understand. So as to  
18 damages—I really want to focus on that—what I'm hearing from  
19 you is: We can get this done; we just think that given the  
20 equitable piece of the case and the proposal to have  
21 bifurcation as to that, it might make sense to throw damages in  
22 that pot as well and focus on liability in the initial trial.  
23 Is that fair?

24 MR. GITLIN: Yes, your Honor. Of course, in full  
25 candor, right, this case is moving very quickly, and we don't

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1 have an interest in—since it wouldn't necessarily affect the  
2 timing of resolution of this case one way or another, the  
3 ultimate resolution, additional time may be useful for  
4 everyone, and particularly if we have in mind an understanding  
5 that essentially the damages portion is going to come last,  
6 even if it isn't sort of part of maybe the broader equitable  
7 proceedings, but we'll get it—we committed to this schedule,  
8 and if that's what's required, we're certainly proceeding on  
9 that schedule until the Court changes it.

10 THE COURT: Okay. And on that point that you raised  
11 about it not really changing anything, that this is a general  
12 point about efficiency, I guess my question is—and I'm happy  
13 for either Ms. Sweeney or for you, Mr. Gitlin, to address  
14 this—what you're proposing is that instead of just finishing  
15 up discovery on liability and damages and having a single jury  
16 trial on that, you want to have liability discovery and then  
17 have summary judgment practice just on liability, then have a  
18 trial just on liability, where I can already see the future,  
19 that there are going to be arguments about whether certain  
20 evidence or argument would be admissible and relevant to just  
21 liability or whether it would only go to causation and damages  
22 and so it should be kind of put to the side. I can already see  
23 that happening. And then if you prevail in that trial, putting  
24 aside any potential appeal that the defendants would seek to  
25 take, you would then have discovery on damages and equitable

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1 relief, and those two forms of relief are different in a lot of  
2 material ways. And then I take it that the defendants would at  
3 least seek leave to move for summary judgment again, raising  
4 the arguments that they've already raised, for instance, on the  
5 motion to dismiss, and then we would have trial on damages and  
6 equitable relief. That seems like a lot of additional work  
7 that you really wouldn't need if the second trial was just  
8 focused on equitable relief and not damages. So maybe you can  
9 set me straight. Why is that not right? Why would it actually  
10 be more efficient to bifurcate damages?

11 MR. GITLIN: Adam Gitlin for the state plaintiffs,  
12 your Honor. And Ms. Sweeney may also have thoughts from the  
13 Department of Justice. But from our perspective, if you—of  
14 course the parties are going to do all the liability-related  
15 discovery now. The issue is that there may be very limited  
16 additional damages-related discovery that would have to happen,  
17 and if we talk about—if we're thinking about the kinds of  
18 discovery that's at issue with respect to equitable relief,  
19 that's significantly broader, and I think we would be able to  
20 do it relatively quickly. However, if there's a liability  
21 verdict in favor of defendants, then we avoid that altogether,  
22 and in that sense, we save resources for everyone involved.

23 THE COURT: All right. All right. So I'm going to  
24 give the defendants a chance to chime in here, but Ms. Sweeney,  
25 turning to the equitable piece, it was always my understanding

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1 that the equitable claims, if you prevail on liability, would  
2 be tried to the bench. I take it that the only real  
3 modification or clarification that you're seeking is that  
4 discovery, to the extent you need discovery, that would be  
5 solely relevant to the equitable relief you might seek, there  
6 would be a period of time after the trial that's scheduled for  
7 March of next year to conduct that discovery. Is that fair?

8 MS. SWEENEY: That's right, your Honor. We think  
9 there would be enormous efficiencies in separating out the  
10 equitable phase of the trial from the liability phase, and it's  
11 really coming upon us fairly quickly with regard to experts  
12 because our initial report is due July 28, and while our  
13 experts could opine on the various alternative permutations of  
14 remedies that would be appropriate in the event we won on some  
15 or all of the claims, it would be a lot more efficient if the  
16 expert is rendering that opinion when we have knowledge of  
17 which claims are at play at the remedies phase of the case. So  
18 we think it would be very beneficial. And certainly this is  
19 the way that other courts have treated these kinds of complex  
20 monopolization trials in very recent history, and in *U.S. v.*  
21 *Google*, what we call the search case, which was in the District  
22 of Columbia, the court bifurcated liability from the remedies  
23 phase. In fact, the remedies trial is going on right now. And  
24 also in the other case against Google, *U.S. v. Google*  
25 concerning ad tech, which is pending in the Eastern District of

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1 Virginia. Although there was an issue, a jury trial demand, as  
2 Mr. Pfeiffer pointed out, Google made a payment that mooted  
3 that demand. That case then was tried to the bench. And from  
4 the beginning, the liability phase was separated from the  
5 equitable remedies phase. So right now, the parties—and the  
6 court has entered an order for a separate remedies trial to  
7 take place several months after the conclusion of the liability  
8 trial. So—

9 THE COURT: Okay. So I'll hear from the defendants,  
10 but I'm on board with that proposal, but what do you mean by  
11 several months?

12 MS. SWEENEY: Well, in that case, the trial, the  
13 liabilities trial resulted in a ruling in favor of the  
14 plaintiffs in April, and the trial is scheduled for September.  
15 Now I'm not saying we would need that much time, your Honor,  
16 and it's something that we would be happy to discuss either  
17 ahead of time or after we were to receive the ruling or verdict  
18 on liability. But that's just an example.

19 THE COURT: So let's assume that we try this case in  
20 March, assuming you overcome summary judgment and everything  
21 else; we have the trial in March, and let's say in April, we're  
22 done, we get a verdict that's in your favor. Your proposal, in  
23 general terms, would be to then have the second trial happen in  
24 something like September; is that fair?

25 MS. SWEENEY: Something like that, your Honor. We

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1 would expect we would want to exchange additional expert  
2 reports on appropriate remedies and then have expert discovery.  
3 It's possible that could be a limited amount of additional fact  
4 discovery that would be helpful to the Court and to the  
5 parties, which would require a little more time, and in the  
6 case of *Google* search, I think that the Court gave the parties  
7 60 days for fact discovery, to be followed by expert reports  
8 and expert discovery and then the trial.

9 THE COURT: All right.

10 MS. SWEENEY: I think I meant *Google* ad tech.

11 THE COURT: Okay. That's fine.

12 Again, I'll hear from the defendants; they may tell me  
13 that all of this makes no sense. But based on what you're  
14 telling me, I'm generally okay with that time frame that you're  
15 laying out. The only real logistical issue within the chambers  
16 is that our staff turns over every year, as you know, and so  
17 you'll just have different staffing on these two cases, which  
18 I'd like to avoid because it's always helpful when everyone  
19 who's been involved in the first trial is there for the second  
20 one, but that's a concern for the Court that we will deal with.  
21 But generally speaking, I'm on board with that. But now either  
22 Mr. Pfeiffer or Mr. Marriott may tell me that none of what you  
23 said should be followed and you're wrong about everything.

24 So from the defendants' side, who's going to handle  
25 this?

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1 MR. PFEIFFER: Your Honor, this is Al Pfeiffer. I'll  
2 be speaking to that topic, but not quite framed that way.

3 THE COURT: Okay.

4 MR. PFEIFFER: So I do want to set one thing straight,  
5 though. The sort of—I think the plaintiff's brief and also a  
6 bit of the argument today is framed almost from the posture  
7 that we, defendants, are making some kind of a motion, or it  
8 was framed earlier that we had demanded a jury trial on  
9 damages. We've been responding to their positions on this  
10 throughout, so we haven't demanded a jury trial. What we said  
11 is they have waived their right to a jury trial on the  
12 determination of damages, and we said that because that's what  
13 they said, and said it in writing. So it's not a position of  
14 us demanding something; it's, again, reacting to what they're  
15 doing here.

16 Let me kind of start with first principles, your  
17 Honor, I guess. Our antennae went up to begin with about all  
18 of this because it's highly unusual, what we're seeing here;  
19 not just the unusual circumstances of the states saying that  
20 they will waive their right to a determination of damages by a  
21 jury, which, again, is at least a big component of what creates  
22 the right, but also that DOJ is using that opportunity to then  
23 say that it therefore, more or less by the osmosis of  
24 association, gets a right to a jury, which is unprecedented.  
25 And states and DOJ have done cases together for longer than

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1 I've been practicing, which at this point is quite a while.  
2 And I asked them, Have you ever done this before? Couldn't  
3 come up with anything. This is really a first time where  
4 they're trying to use this mechanism to get a jury trial. That  
5 just raises, you know, suspicions.

6 But ultimately it comes down to—the determination of  
7 bifurcation, as your Honor is focused on, I think comes down to  
8 efficiency and fairness, according to the rules. And the way  
9 they've structured the original proposal, at least, we don't  
10 think it meets those criteria. I will say at the outset, I do  
11 think that one can separate out equitable remedies, and I think  
12 that's very different than trying to bifurcate damages. And  
13 the biggest problem I think is one your Honor also alluded to,  
14 which is the question of—it traces back to the question of do  
15 the states have any claims here that they have proper standing  
16 to assert that would give them a right to a jury. Your Honor  
17 had addressed that in ruling on our motion to dismiss and  
18 specifically said, this is something we should be addressing at  
19 summary judgment. So my assumption is, we'd be seeing, as part  
20 of the liability case—which means as part of the expert report  
21 process and as part of the summary judgment motions, and if it  
22 goes further than that, on from there—the states asserting the  
23 basis for which they, you know, can actually claim damages in  
24 that primary ticketing market that your Honor observed in the  
25 motion to dismiss is the basis for their claims. We don't



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1 think they can. And we certainly look forward to that, but  
2 what we don't want to do is see a situation where they somehow  
3 get a free pass on laying out their theory of damages, because  
4 it's not just damages. In this case, their theory of damages,  
5 their proof of damages, is a fundamental part of their  
6 liability case, and might moot all of this question about who  
7 gets a jury right or not. So we don't agree from either—

8 THE COURT: Wait. Mr. Pfeiffer, can you just pause  
9 for a second and can you just maybe run it back again. Why is  
10 the damages issue also relevant to the liability phase? Maybe  
11 you can just expand on that.

12 MR. PFEIFFER: Absolutely, your Honor.

13 So they're proceeding, the states are proceeding *in*  
14 *parens patriae*, on behalf of their citizens. The theory under  
15 which they are proceeding is that there has been harm to  
16 competition in the primary ticketing market that has harmed  
17 their citizens. The way that works is through an overcharge.  
18 It basically has to be. And in any other setting, you'd see  
19 this would be a class action, I guess, and the putative class  
20 would have to be presenting proof, you know, before liability  
21 is determined, as part of their liability case, proof that  
22 their plaintiffs, their class members, their citizens here,  
23 have actually suffered the type of harm that they say they've  
24 suffered. That's going to be something we would expect would  
25 be a large focal point of the states' expert reports. If they

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1 don't come forward with a compelling way to do that, if, for  
2 example, it's subject to a *Daubert* challenge or if it simply  
3 doesn't pass muster on summary judgment, then they have no  
4 case, they have no basis by which to prove harm to competition,  
5 and they lose. They may also prove it in such a way that it's  
6 so convoluted that it demonstrates our point, your Honor, which  
7 we asserted earlier and you deferred to later in the case, as  
8 to whether they are efficient enforcers of the type of claims  
9 they're doing, however they proceed with that. And we  
10 obviously don't know the answer to this, which is why we  
11 couldn't even contemplate whether we could pay off their  
12 damages because we don't even know what their theory is, much  
13 less what their number is, but they need to proceed and give  
14 that information before the Court decides whether anybody has a  
15 right to a jury, and in fact, whether they have a right to  
16 proceed on those claims at all.

17 THE COURT: All right. Understood.

18 So Ms. Sweeney, or Mr. Gitlin, if you want to respond  
19 to what Mr. Pfeiffer just said?

20 MR. GITLIN: Your Honor, Adam Gitlin for the state  
21 plaintiffs. I think most of that was directed at state  
22 plaintiffs so I'll start, and if Ms. Sweeney has anything to  
23 add, I'm sure she will.

24 So first, we don't agree that we have waived anything.  
25 We've made very clear that to the extent in discussions about

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1 what would be your optimal trial structure in this case, having  
2 those conversations with defendants, that any of our—that any  
3 agreement to elect to only exercise our jury trial right for  
4 the liability phase was conditional, was based on the  
5 conversations we were having. And we make that clear in our  
6 brief at page 14. We make clear that for purposes of seeking  
7 bifurcation and partially withdraw our demand for a jury trial  
8 on monetary remedies. Of course, if the Court declines to  
9 adopt the structure we've proposed, we otherwise preserve our  
10 jury trial right, and if that means it's a jury trial on  
11 liability and damages all at once, that's fine.

12 I would note, in response to a comment the Court made  
13 earlier before we changed subjects, I don't think if we were  
14 talking about the bifurcation that plaintiffs proposed, we  
15 would not expect to have material damages-related discovery  
16 after a liability trial since damages are backwards looking. I  
17 think we would do any discovery we needed for damages on the  
18 current schedule, and then, you know, there would be expert  
19 testimony in whatever damages phase.

20 But to go back to Mr. Pfeiffer's point, I think the  
21 second one was that essentially states lack standing and  
22 therefore we don't—we haven't established we have a jury trial  
23 right at all. So first of all, as we've argued in our brief,  
24 the civil penalties claims don't turn on whether or not the  
25 states lack standing to press damages claims. Those get a jury

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1 trial either way. And if the point is that we're supposed to  
2 defer this decision on whether or not we have a jury trial  
3 right until summary judgment for the Court to determine the  
4 scope of that right, then we submit that the Court should adopt  
5 the trial structure we've proposed for the jury trial on  
6 liability and then, if the Court grants summary judgment on  
7 plaintiff's federal and state damages claims, then the parties  
8 just won't present damages-related proof at trial on liability.  
9 But in terms of the civil penalties, the jury trial right only  
10 goes away if the Court grants summary judgment as to liability  
11 on all claims.

12 THE COURT: Okay. Understood. And as to the  
13 antitrust standing issues, under your proposal, those would be  
14 taken up in Phase II, when we address damages; is that right?  
15 Or would you address that in the efficient enforcer factors in  
16 this phase of the case?

17 MR. GITLIN: I think the way it would work as a matter  
18 of practice, your Honor, is that—this isn't quite the same as  
19 a class case, but I think certainly the quantum of damages  
20 would happen in that later phase. I think, you know, what's  
21 sometimes referred to in the class context as antitrust impact  
22 would be certainly something where the proof would—a lot of  
23 the underlying facts would be presented at the liability trial.  
24 I think, you know, there's some overlapping evidence,  
25 obviously, there.

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1 THE COURT: All right. And Ms. Sweeney, anything from  
2 your end?

3 MS. SWEENEY: Yes. I would just like to respond to  
4 Mr. Pfeiffer's comment that the United States does not have a  
5 jury trial right and says we get there by virtue of osmosis of  
6 association, and Mr. Pfeiffer is of course ignoring  
7 well-settled law, including the United State Supreme Court's  
8 decision in *Beacon Theatres v. Westover*, the Second Circuit's  
9 decision in *Wade v. Orange County Sheriff's Office*. And I hear  
10 Mr. Pfeiffer addressing at length issues pertaining to summary  
11 judgment. Well, when we first made our proposal to the  
12 defendants, we talked about bifurcation without addressing all  
13 of these issues which may be resolved by summary judgment, and  
14 so I don't understand why Mr. Pfeiffer concludes that this  
15 initial determination as to whether to bifurcate between  
16 liability and the remedies phase has to be considered together.  
17 So we would suggest, your Honor, that if your Honor is inclined  
18 to think that summary judgment has to occur before this  
19 decision can be made whether there's a jury trial right, that  
20 doesn't mean that the Court can't nonetheless bifurcate between  
21 liability and remedies.

22 THE COURT: All right. Thank you.

23 So the motion to bifurcate trial will be granted in  
24 part and denied in part. It will be granted as to the  
25 equitable remedies. It appears that there's no disagreement

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1 between the parties that that portion of the case can be  
2 addressed at a second trial to the bench. And the Court is of  
3 the view that that would foster fairness and efficiency. And  
4 so for those reasons, that portion of the motion is granted.

5 The portion of the motion relating to damages is  
6 denied. For the reasons that Mr. Pfeiffer articulated and as  
7 in the course of this colloquy we've addressed, the Court is  
8 not of the view that bifurcating damages from liability would  
9 foster either fairness or efficiency and so that will be part  
10 of the initial trial that as of the current time would be to a  
11 jury in March of 2026.

12 As to the schedule, just in case this wasn't clear, to  
13 the extent that the parties can meet and confer and there are  
14 adjustments to some of the interim deadlines that would not  
15 affect the actual trial date and that affords the Court enough  
16 time to address the defendants' summary judgment motions, which  
17 I have heard that they plan to make, I am fine with the parties  
18 proposing some adjustments, for instance, to the expert report  
19 deadlines, Ms. Sweeney, so that is to say that if you can talk  
20 to the other side and there's a proposal that would work, I'm  
21 open to moving some of those interim deadlines around. If  
22 there's a dispute, I'll take it up, and I'll take a look and  
23 see if there's something that we can do to make things a little  
24 easier for the parties while holding our trial date. Does that  
25 make sense?

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1 MS. SWEENEY: Yes, your Honor.

2 THE COURT: All right.

3 MR. PFEIFFER: This is Al Pfeiffer. That makes sense  
4 to us too, your Honor.

5 THE COURT: Okay. Good. So we'll put in an order  
6 reflecting the resolution of this motion.

7 And before we leave, Ms. Sweeney, any other issues  
8 that you'd like to address or put on the Court's radar or  
9 anything we can help with here?

10 MS. SWEENEY: Your Honor, we do have something to put  
11 on the Court's radar, and that is that due in part to the  
12 supplemental initial disclosures we received last week from the  
13 defendants, which included 102 new individuals and entities  
14 with knowledge, we're about to file a letter motion requesting  
15 an additional number of hours for fact depositions. And in  
16 addition—and this pertains to the point your Honor already  
17 made, which is whether we can extend the taking of those fact  
18 depositions through the end of July, so it wouldn't affect the  
19 other schedule, the other dates, deadlines in the schedule, but  
20 I just want to point out that, just briefly, that the  
21 defendants' initial disclosures are in sharp contrast to their  
22 initial disclosures made a year ago, when they only disclosed  
23 13 nonparty entities and 0 nonparty individuals, and now we  
24 have a very long list of individuals and entities in the live  
25 entertainment business that we have to investigate and

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1 potentially depose. So that's why, even though we have been  
2 very careful in taking short depositions and allocating our  
3 time, deposition by deposition, we're going to need additional  
4 hours, and we're asking for 100 additional hours of deposition  
5 time.

6 THE COURT: Okay. I'll take a look at that  
7 application when I receive it.

8 MS. SWEENEY: Thank you, your Honor.

9 THE COURT: Mr. Gitlin, anything else on your end?

10 MR. GITLIN: Nothing further, your Honor.

11 THE COURT: All right. Mr. Pfeiffer, anything for the  
12 good of the order?

13 MR. PFEIFFER: Nothing here, your Honor. Thank you.

14 THE COURT: All right. Mr. Marriott, anything on your  
15 end?

16 MR. MARRIOTT: Nothing here, your Honor. Thank you.

17 THE COURT: Okay. And just one additional point. And  
18 this isn't urgent; it doesn't need to be done immediately. But  
19 if the parties can meet and confer on a schedule for the  
20 equitable phase of the case, if the plaintiffs prevail, what  
21 would the parties propose as a schedule and a trial date on the  
22 equitable remedies phase of the case and trial, that would be  
23 helpful to the Court. Try to get it in in the next couple of  
24 weeks, just so we can have a complete schedule here.

25 With that, thank you very much to both sides. Have a



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1 great weekend. And we are adjourned.

2 ALL COUNSEL: Thank you, your Honor.

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